

REMARKS

Claims 1-30 are pending in the application; the status of the claims is as follows:

Claims 1-5, 16-22, 29, and 30 are allowed.

Claims 6-15, and 23-28 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,488,681 to Deacon et al ("Deacon").

Claims 6, 7, 9, 11-13, 24, 26, and 28 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,647,039 to Judkins et al ("Judkins").

Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Judkins.

Claims 6, 9 and 11 have been amended to more distinctly claim the invention. These changes do not introduce any new matter.

Rejections under 35 U.S.C. §§ 102 or 103

The rejections of claims 6-15, and 23-28 under 35 U.S.C. § 102(b) as being anticipated by Deacon and/or Judkins, or obvious under 35 U.S.C. § 103(a) over Judkins, is respectfully traversed based on the following.

In contrast to the cited references, claim 6 includes:

wherein each recurrence of the second refractive index portion has a variable refractive index, and wherein, when the second refractive index portions are in a first refractive state, the optical functional device passes light having a first characteristic and blocks light having a second characteristic, and, when the second refractive index portions are in a second refractive state, the optical functional device passes light having the first characteristic and redirects light having the second characteristic.

Thus, the invention of claim 6 passes light having a first characteristic and, in a first state, blocks light having a second characteristic and, in a second state, redirects light having the second characteristic. As noted by the Examiner on page 7, lines 1-2 of the Office Action: "[t]he references of record do not teach or suggest a device having a periodic structure which operates in this manner." Therefore, claim 6 is not anticipated or obvious over the cited references. Claims 7, 8, 23 and 24 are dependent upon claim 6 and thus include every limitation of claim 6. Therefore, claims 7, 8, 23 and 24 are also not anticipated and not obvious.

Also in contrast to the cited references, claim 9 includes:

wherein each recurrence of the second refractive index portion has a variable refractive index, and wherein, when the second refractive index portions are in a first refractive state, the optical functional device passes light having a first characteristic and blocks light having a second characteristic, and, when the second refractive index portions are in a second refractive state, the optical functional device passes light having the first characteristic and redirects light having the second characteristic; ...

As noted above with regard to claim 6 and in the Office Action, the cited references do not show or suggest these features. Therefore, claim 9 is not anticipated or obvious over the cited references. Claims 10, 25 and 26 are dependent upon claim 9 and thus include every limitation of claim 9. Therefore, claims 10, 25 and 26 are also not anticipated and not obvious.

Also in contrast to the cited references, claim 11 includes:

wherein each recurrence of the second refractive index portion has a variable refractive index, and wherein, when the second refractive index portions are in a first refractive state, the optical functional device passes light having a first characteristic and blocks light having a second characteristic, and, when the second refractive index portions are in a second refractive state, the optical functional device passes light having the first characteristic and redirects light having the second characteristic.

As noted above with regard to claim 6 and 9, and in the Office Action, the cited references do not show or suggest these features. Therefore, claim 11 is not anticipated or obvious over the cited references. Claims 12-15, 27 and 28 are dependent upon claim 11 and thus include every limitation of claim 11. Therefore, claims 12-15, 27 and 28 are also not anticipated and not obvious.

Accordingly, it is respectfully requested that the rejections of claims 6-15, and 23-28 under 35 U.S.C. § 102(b) as being anticipated by Deacon and/or Judkins, or obvious under 35 U.S.C. § 103(a) over Judkins, be reconsidered and withdrawn.

CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.


Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Application No. 09/765,229
Amendment dated June 23, 2004
Reply to Office Action of March 3, 2004

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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June 23, 2004

DA1 298484v3